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Unauthorized Practice Decisions in Wisconsin

Wisconsin Bar Association

UNAUTHORIZED PRACTICE DECISIONS IN WISCONSIN

The Junior Bar Association of Milwaukee County has secured a favorable decision in the case of State ex rel Junior Association of Milwaukee Bar vs. Rice, which was decided May 2, 1939, in the Circuit Court of Milwaukee County. The defendant is an independent adjuster and investigator for insurance companies, acting for different companies from time to time in various capacities. The court held that locating witnesses and evidence, taking photographs, statements of witnesses and acts of like nature, an appraisement of damages to physical property where liability is undisputed did not in themselves constitute the practice of law. It was held, however, that each of the following acts does constitute the practice of law:

"1. Appearing in a representative capacity before a Justice of the Peace.

2. Advising or recommending that an insurance company settle a claim asserted against it for any amount or sums.

3. Advising or recommending that an insurance company refuse or reject a claim asserted against it.

4. Advising or recommending others, including insurance companies, of their rights or duties towards insurance companies or third persons.

5. Advising or recommending that insurance companies have subrogation or contribution claims against other insurance companies.

6. Negotiating settlements or adjustments for or on behalf of insurance companies with others in a representative capacity.

7. Engaging in the practice of being an intermediary between an attorney and third persons.

8. Advising or offering to advise and construing the rights of insurance companies, claimants or third persons of their respective rights arising out of or by reason of a contract of liability, casualty, fire or indemnity insurance existing between any insurance company and another.

9. Selection and preparation of releases, covenants not to sue, contracts or agreements for the settlement or compromise of claims, against insurance companies or other similar agreements for or on behalf of insurance companies or third persons (this does not apply to procuring execution of prepared instruments, where defendant exercises no discretion in selection or preparation or to payment by delivery of check, draft or payment of money in discharge of claim.)"

The result is that the main activities of the defendant will be enjoined by the judgment of the court. The members of the Junior Association of the Milwaukee Bar deserve the highest praise for their public spirited work in this and other cases in Milwaukee County. The Rice case together with the Podell case, which enjoined the activities of a claim adjuster acting for and on behalf of claimants, covers the field of claim adjustments in

Wisconsin. It is not yet known whether an appeal will be taken in the Rice case and a determination by the Supreme Court secured.—Wisconsin Bar Bulletin.

OUR SUPREME COURT HOLDS:

In Sarah (Mrs. Melvin) Tweten, Pltf. and Resp., vs. North Dakota Workmen's Compensation Bureau, a Branch of the Executive Branch of said State of North Dakota, Deft. and Applt.

That under the North Dakota Workmen's Compensation Act (Laws 1935, ch. 286, Sec. 1), the term "injury" includes "any disease approximately caused by the employment."

That pneumonia, contracted by an employee of a County, due to exposure while repairing buildings, constructing fences and planting trees on the County Fair Grounds, is an "injury" compensable under the North Dakota Workmen's Compensation Act.

That for reasons stated in the opinion, allowances made by the trial court for attorney's fees and witnesses fees are sustained.

From a judgment of the District Court of Wells County, McFarland, J., defendant appeals.

AFFIRMED. Opinion of the Court by Christianson, J. Burke, J., did not participate.

In S. E. Ellsworth, Pltf. and Applt., vs. Martindale-Hubbell Law Directory, Inc., a Corporation, Deft. and Respt.

That upon an appeal from a judgment where no settlement of the statement of the case has been had, this court can consider only those matters appearing upon the face of the judgment roll.

That the judgment roll consists of papers designated by statute and other documents cannot be considered upon appeal as a part thereof merely because the clerk has attached them to the statutory judgment roll.

That where the case has not been settled, this court upon appeal cannot consider the minutes of the clerk of the trial court or an abbreviated transcript certified to only by the Court Reporter as such documents are not a part of the judgment roll, unless they have been made part of the settled statement of the case.

That a presumption exists in favor of the correctness of an order and judgment of the trial court. The burden is upon one alleging error to demonstrate it upon a legally constituted and certified record.

Appeal from the District Court of Stutsman County. Hon. Geo. M. McKenna, Special Judge. AFFIRMED. Opinion of the Court by Morris, J. Burr, J., concurs specially.

In O. V. Anderson, Pltf. and Resp., vs. A. C. Anderson, Deft. and Applt.

That failure of a driver of an automobile to slacken speed because of protest by a guest is no evidence of negligence or wantonness on the part of the driver, and in an action brought by the guest, based solely on the alleged gross negligence of the driver, the driver was entitled to an instruction to this effect

That in the case at bar it is held: that because determination of the alleged gross negligence of the driver was a close question of fact the refusal of the trial court to instruct the jury as to the lack of such probative effect in the protest against speed constituted reversible error. APPEAL from the District Court of Ward County. Hon. John C. Lowe, Judge. REVERSED. Opinion of the Court by Burr, J.

In State of North Dakota, Pltf. and Resp., vs. Syvert Halverson, doing business as Halverson Ice Company, Deft. and Applt.

That the provision of chapter 315, Session Laws N. D. 1931, that the Workmen's Compensation Bureau shall cause suit to be brought for the collection of premiums and penalties within twenty days after the default of any employer, places upon the Bureau the duty to bring suit within the time speci-